

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

MAY 25 2006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

Michael N. Milby, Clerk of Court

UNITED STATES OF AMERICA

VS

TRAFIGURA AG
(Incorporated under the laws of
Switzerland)§
§
§
§
§
§
§

CRIMINAL NO. 06-64

PLEA AGREEMENT

The United States of America, by and through Donald J. DeGabrielle, Jr., United States Attorney for the Southern District of Texas, and Melissa Annis, Assistant United States Attorney, and defendant, Trafigura AG, and defendant's counsel pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

TERMS OF THE AGREEMENT

1. The defendant agrees to give up the right to be indicted by a grand jury and agrees to plead guilty to Counts One and Two of the Criminal Information (hereinafter "Information") in this case and to persist with that plea.

a. The defendant agrees that this Agreement will be executed by an authorized representative. Defendant further agrees that a

Resolution duly adopted by the Board of Directors of Trafigura AG, attached to this agreement as Exhibit 1, represents that the signatures on this Agreement by Trafigura AG's counsel are authorized by Trafigura AG's Board of Directors.

b. The defendant further agrees to pay immediately to the United States a fine in the amount of \$8,000,000.00 and warrants it has hired outside counsel to conduct compliance reasonably capable of reducing the prospect of conduct which violates U.S. law.

c. Further, the defendant agrees in addition to the fine, to immediately forfeit, and hereby does forfeit to the United States the sum of \$9,937,551.59 as provided in the Agreed Order of Forfeiture at Sentencing being filed in this case. The defendant agrees there is a direct and sufficient nexus, as required by Fed.R.Crim. P. 32.2(b)(1), between the defendant's violations of 18 U.S.C. § 542 as charged in the Criminal Information, and the proceeds the United States seeks to forfeit, namely, \$9,937,551.59. The defendant consents to and joins in any motion, agreed order of forfeiture, or judgment, and agrees to execute all documents necessary to accomplish the purposes contemplated by this provision. The defendant agrees to take whatever steps are necessary to convey clear title to forfeitable assets to the United States including but not limited to providing an

agreement by the defendant's parent company, subsidiaries and/or affiliates not to contest in any criminal or civil proceeding the forfeiture of \$9,937,551.59.

d. The defendant also agrees, in addition, to immediately pay civil penalties to the United States in the amount of \$1,900,000.00 executed through a written settlement agreement with the Office of Foreign Assets Control (hereinafter OFAC), United States Department of Treasury.

e. The defendant agrees, along with the United States and OFAC, that all money due and owing the United States as a result of this criminal prosecution and the civil settlement with OFAC shall be paid immediately from the blocked funds on account at JP Morgan Chase pursuant to the action of OFAC in approximately November of 2001.

2. Counts One and Two, in pertinent part, charge the defendant with Entry of Goods into the United States by Means of False Statements without reasonable cause to believe the truth of such statements, in violation of Title 18, United States Code, Section 542.

3. In exchange for the defendant's plea of guilty to the Criminal Information in this case as well as the defendant's agreements outlined in paragraph one of this written plea agreement, the United States agrees to

recommend the Court impose a fine of \$8,000,000.00 and will seek no further restitution or probation. The United States agrees that the defendant may cancel its \$10,000,000 letter of credit posted at the request of OFAC and any balance remaining from the funds blocked by OFAC in the JP Morgan Chase account will be turned over to the defendant once all financial obligations imposed on the defendant by this agreement, including forfeiture, are satisfied. Further, the United States Attorneys for the Southern District of Texas and the Southern District of New York agree not to further prosecute Trafigura AG for federal offenses stemming from the transactions alleged in the Criminal Information in this cause should the defendant abide by each term of the plea agreement.

PENALTY

4. The penalty for a violation of Title 18, United States Code, Section 542 includes a possible period of probation from one year to five years, a fine of up to twice the gross gain or loss resulting from the offense, and a \$400 Mandatory Special Assessment per count of conviction. Title 18, United States Code, Sections 3551(c), 3561, 3571(d), and 3013(a)(2)(B). See paragraphs one and three for the parties' agreement as to imposition of punishment.

a. The defendant hereby stipulates and agrees not to institute or participate in any proceeding to interfere with, alter, or bar

enforcement of any fine, special assessment or forfeiture order pursuant to the automatic stay or other provision of the United States Bankruptcy Code.

b. The defendant agrees that nothing in this plea agreement is intended to release the defendant from any and all of the defendant's excise and income tax liabilities and reporting obligations for any and all income not properly reported and/or legally or illegally obtained or derived.

WAIVERS

5. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Knowing that, the defendant waives the right to appeal the plea, conviction and sentence (or the manner in which it was determined) on the grounds set forth in Title 18, United States Code, Section 3742. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

6. The defendant is also aware that the United States Constitution and the laws of the United States, including Title 28, United States Code, Section 2255, afford the defendant the right to contest or "collaterally attack" its conviction or sentence after his conviction has become final. Knowing that, the defendant knowingly waives the right to contest or "collaterally

attack” the defendant’s plea, conviction and sentence by means of any post-conviction proceeding.

7. Defendant waives all defenses based on venue, speedy trial under the United States Constitution and Speedy Trial Act, and the statute of limitations, in the event that (a) Defendant’s conviction is later vacated for any reason, (b) Defendant violates any provision of this Agreement, or (c) Defendant’s plea is later withdrawn. Further the defendant waives any and all constitutional and non-jurisdictional defects.

8. This plea agreement binds only the United States Attorney’s Office for the Southern District of Texas and the defendant; it does not bind any other United States Attorney except as stated in paragraph 3 of this written plea agreement.

RIGHTS AT TRIAL

9. The defendant represents to the Court that defendant is satisfied that the defendant’s attorney has rendered effective assistance. Defendant understands that by entering into this Agreement, the defendant surrenders certain rights as provided in this Agreement. Defendant understands that the rights of defendants include the following:

- a. If the defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting

without a jury if the defendant, the United States and the court all agree.

b. At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and the defendant's attorney would be able to cross-examine them. In turn, the defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for the defendant would not appear voluntarily, the defendant could require their attendance through the subpoena power of the Court.

c. At a trial, the defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if the defendant desired to do so, he could testify on his own behalf.

10. The defendant understands that nothing in this plea agreement will restrict access by the United States Probation Office or the Court to information and records in the possession of the United States or any of its investigative law enforcement agencies, including State and local law enforcement agencies, as well as information, documents and records obtained from the defendant.

BREACH OF THE PLEA AGREEMENT

11. If the defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement.

12. It is understood by the defendant and the United States that should the defendant fail to comply with any of the obligations set forth in this agreement or violate any of the terms or conditions set forth in this agreement or engages in any criminal activity through sentencing, the United States shall be released from its obligations under this agreement, yet the defendant's plea and sentence will stand and the Southern District of Texas may institute or re-institute prosecution including but not limited to enhancement of the sentence and may prosecute the defendant for any and all violations of Federal law which the defendant may have committed. For purposes of this paragraph, the defendant waives any statute of limitations that may apply to any such Federal offenses or counts. Whether the defendant has breached any provision of this plea agreement shall be determined by the United States.

FACTUAL BASIS

13. Should the defendant proceed to trial, the following facts among others would be proven beyond a reasonable doubt: . . .

Subsequent to the Iraqi military invasion of Kuwait, the United

Nations (hereinafter U.N.), on August 6, 1990, imposed economic sanctions on the Government of Iraq. These sanctions prohibited member states of the U.N. from, among other things, trading in any Iraqi commodities or products. The U.N. continued to enforce these sanctions into 2003.

On April 14, 1995, the Security Council of the U.N. adopted Resolution 986, which authorized the Government of Iraq to sell oil under certain conditions. The proceeds of all sales of Iraqi oil from the State Oil Marketing Organization, (hereinafter "SOMO") were to be deposited into an escrow bank account monitored by the U.N. and used by the Government of Iraq only to purchase humanitarian goods. The "Oil-for-Food Program" was then established by the U.N. office of Iraq Programme to administer the sale of oil and purchase of humanitarian goods by Iraq. A special bank account was established to handle these sales and purchases. Under the Oil-for-Food Program, the government of Iraq selected the companies and individuals who received rights to purchase Iraqi oil. Ibex Energy of France was one of the companies selected by SOMO to purchase and lift Iraqi oil during 2001. Each purchase was subject to the approval of the U.N. Security Council Committee established by resolution 661 (1990).

Voyage I

On April 11, 2001, Ibex Energy of France obtained U.N. authorization to purchase and lift 1,800,000 barrels of Basrah Light crude

oil from SOMO. On April 30, 2001, Trafigura Beheer entered into an agreement with Ibex Energy to purchase approximately 1,800,000 barrels of Basrah Light crude oil. On May 16, 2001, the U.N. issued a Notification to the Master of the vessel *Essex* (a very large crude carrier) authorizing the shipment of only 1,798,385 net barrels of Basrah Light crude oil from Iraq for discharge in the United States. Payment for 1,798,385 barrels of Iraq Basrah Light crude oil shipped on the *Essex* to the United States, was paid for through the U.N. escrow account as required.

In May of 2001, Roundhead Inc., a Nassau, Bahamas corporation and subsidiary of Trafigura, contracted with Ibex Service & Equipment BVI to purchase between 200,000 and 300,000 barrels (approximately 229,237 barrels were ultimately loaded in Iraq and imported into the United States) of Basrah Light crude oil. The payment for this quantity of Basrah Light crude oil was ultimately not deposited into the U.N. escrow account in violation of U.N. Resolution 986.

In May 2001, Trafigura AG marketed and sold both parcels- totaling approximately 2,022,000 barrels, including the 229,237 barrels of oil- to two oil refinery customers in Houston, Texas. In selling this crude oil to the two Houston energy companies, Trafigura AG warranted to its customers that the oil was "obtained pursuant to all necessary approvals and in accordance with all applicable procedures of U.N. resolution 986 and the

U.N. Security Council Committee” established by SCR 661. This was a false statement and the defendant lacked reasonable cause to believe the truth of such statement. Further, Trafigura AG provided these warranties and documentation to its U.S. customers knowing they would rely on them to make a U.S. Customs entry declaration. As a result of that statement, unauthorized barrels of Iraqi crude oil were introduced into the commerce of the United States on or about July 2, 2001. A payment of \$5,183,887.43 for the unauthorized crude oil is subject to forfeiture.

Voyage II

In July 2001, IBEX Energy obtained a U.N. authorization to purchase and lift 7 million barrels of Iraqi oil, 1,787,407 barrels of which was authorized to be lifted for transport to the United States by the *Essex*. Trafigura Beheer purchased the 1,787,407 barrels from Ibex Energy and payment for this oil was made through the U.N. escrow account as required.

On August 1, 2001, Roundhead, Inc. agreed to buy from Ibex Services & Equipment BVI an additional 200,000 to 300,000 barrels (approximately 271,669 were lifted in Iraq and transported on the *Essex*) of Basrah Light Crude Oil. The payment to SOMO for this oil was not deposited into the U.N. escrow account.

In September and October 2001, Trafigura AG marketed and sold

both parcels- totaling approximately 2,089,000 barrels including the 271,669 barrels - to two refinery customers, one in Houston and one in South America. In selling this crude oil to the Houston energy company, Trafigura AG warranted to its customer that the oil was "obtained pursuant to all necessary approvals and in accordance with all applicable procedures of U.N. resolution 986 and the U.N. Security Council Committee" established by SCR 661. This was a false statement and defendant lacked reasonable cause to believe the truth of such statement. Further, Trafigura AG provided these warranties and documentation to its U.S. customer knowing it would rely on them to make a U.S. Customs entry declaration. As a result of that statement, the unauthorized barrels of Iraqi crude oil were introduced into the commerce of the United States on or about October 16, 2001. A payment of \$4,753,664.16 for the unauthorized crude oil is subject to forfeiture.


Prior to the United States company paying Trafigura AG's invoices for the crude oil, OFAC sent a letter to the Houston company blocking the payments to Trafigura AG. The U.S. company was instructed to put the money in an account at JP Morgan Chase in Houston. This money and accruing interest are still on deposit. Trafigura also provided a \$10,000,000 letter of credit, which is held by OFAC, as a bond surety for Trafigura's agreement to come under United States jurisdiction with regard to

violations of U.N. sanctions and resolutions.

14. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty.

Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Executed on this the 25th day of May, 2006.



Trafigura AG
Signed by Counsel with Approval of
Board of Directors (Exhibit 1)


SUBSCRIBED AND SWORN TO BEFORE ME on this the ____ day of
May, 2006.

MICHAEL N. MILBY, Clerk

By:
Deputy Clerk

APPROVED:

DONALD J. DeGABRIELLE, JR.
UNITED STATES ATTORNEY

Assistant United States Attorney


Attorney for the Defendant